

**U.S. Department of Interior
Bureau of Land Management
Roseburg District, Oregon**

Ward Creek Density Management and Commercial Thinning Harvest

Revised Decision Record

The proposed action involves the Density Management harvest of second growth timber on 94 acres and the commercial thinning on 88 acres of second growth forest in the Elk Creek and Siuslaw drainages located in Sections 5, 7 and 17; T21S R4W; W.M. Harvest activities will occur on 182 acres total and harvest approximately 1800 MBF of timber. This project is located in the Matrix and Riparian Reserve Land Use Allocations.

This project was formerly analyzed in EA No. OR-104-97-12 and sold at auction on December 23, 1997 to D. R. Johnson Lumber Company and awarded on May 13, 1998. On April 28, 1998, the U.S. District Court, Western District of Washington, issued an order in the case of Pacific Coast Federation of Fisherman's Association et al. v. the National Marine Fisheries Service (NMFS), et al (PCFFA), which found the BLM to be non-compliant with Section 7(a)(2) of the Endangered Species Act (ESA) due to a determination that the site-specific Biological Opinions (BO) of June 18, 1997 and July 22, 1997 were invalid. The Court determined that the BO needed to more clearly establish project consistency with Watershed Analysis, the Aquatic Conservation Strategy (ACS) objectives, and NMFS March 18, 1997 plan-level BO. This sale was reanalyzed in EA No. OR-104-98-27 and a Decision and Finding Of No Significant Impact (FONSI) were signed on September 29, 1998. This sale was suspended from operations on April 14, 1999 and has been subsequently extended four times. On August 10, 1998 the National Marine Fisheries Service coho listing litigated in Alsea Valley Alliance et al. v. Donald L. Evans (Alsea Valley), was declared by District Court for the District of Oregon to be unlawful and set aside as "arbitrary and capricious". This ruling was appealed to the Ninth Circuit Court of Appeals (November 2001) and the District Court ruling was stayed pending the outcome of the appeal. The Ninth Circuit Court of Appeals subsequently ruled that it lacked jurisdiction and dismissed the appeal and dissolved the stay (February 24, 2004) effectively affirming the District Court ruling. This ruling has removed any ESA consultation requirements for the coho salmon and cleared the way to allow resumption of activity on this sale.

This proposal is in conformance with the *"Final - Roseburg District Proposed Resource Management Plan / Environmental Impact Statement (PRMP/EIS) dated October 1994 and its associated Roseburg District Record of Decision and Resources Management Plan (RMP) dated June 2, 1995.*

The following changes should be noted to the EA:

The EA (pg. 1) stated that "This project was formerly analyzed in EA No. OR-104-97-05) ...". This should have stated EA No. OR-104-97-12. The EA (pg. 5; para. C1a) should state "There is a fish bearing stream adjacent to Unit 7E." instead of "There are no fish-bearing streams ...".

The EA was reviewed by the Swiftwater Field Office to determine whether the analysis was still appropriate. The following changes or points of clarification should be noted:

1. The EA (page 2) refers to the East Elk Watershed Analysis and the Elk Creek Fifth-Field Watershed Analysis (Second Iteration). These analyses have been superseded by the Elk Creek Watershed Analysis (March 2004). The Elk Creek Watershed Analysis does not disclose any new information or make any new management recommendations that would alter the original analysis or conclusions for this project.
2. The EA (page 3) mentions the presence of *Helvella compressa* a Survey and Management (S&M) Strategy 1 species. This species does not require protection since the action would not threaten its long-term viability (Appendix D). The *Record of Decision To Remove or Modify the Survey and Manage Mitigation Measures Standards and Guidelines in Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl*, dated March 2004, has eliminated the Standards and Guidelines for Survey and Manage species. Thus, the survey and manage mitigation measure is no longer applicable and the species is not managed under BLM's special status species program.
3. The EA (page 4) lists "Impacts to Special Status Species" as a key issue to be analyzed. At the time this project was analyzed Survey and Management protocols were being developed and implemented. The impacts to S&M species were of particular concern at that time, however since then the survey and manage requirements are no longer applicable. Under current standards this would no longer be considered a key issue.
4. The EA (page 7) states that subsoiling would be done with a winged subsoiler pulled by a crawler tractor. This could also be done with a specially equipped excavator with similar impacts.
5. The EA (page 10) failed to state that hardwoods would also be retained.
6. The EA (page 12) discusses consultation with the National Marine Fisheries Service. As the result of the District Court ruling in Alsea Valley, and the Ninth Circuit dismissal of the appeal there are no longer ESA-listed fish species within the project area. The Magnuson-Stevens Fishery Conservation and Management Act (MSA), in accord with the Sustainable Fisheries Act of 1996 (Public Law 104-267) designated Essential Fish Habitat (EFH) for coho and chinook salmon (Federal Register, Vol. 67, No. 12). The MSA defined EFH as "...those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity (Federal Register, Vol. 67, No. 12)." This project was assessed for effects to EFH (see rationale below).

These changes do not alter the analysis or conclusions of the EA, nor do they require reanalysis.

Decision

It is my decision to authorize the implementation of the Proposed Action Alternative as outlined in the EA (Section II, pg. 4) and lift the suspension and permit the purchaser to resume operations. The project design criteria for this alternative are listed on pages 5-8 of the EA. These features were developed into contract stipulations as part of the timber sale contract.

This decision includes increasing in the no-cut buffer in Unit 7 and reduction of an acre from the unit. The contract will be modified to remove this volume from the dropped area.

The following specifics should be noted as the result of sale layout. The figures cited in the EA may vary from those cited and are considered as preliminary estimates and not final figures. The fact that the EA figures were preliminary estimates has not limited the decision maker's ability to determine and evaluate the impacts of this action.

A total of 535 ft. (0.1 miles) of temporary road (two spurs) will be constructed. A total of 5.13 miles of existing road will be renovated (i.e. brought back to its original design standards) and 2.47 miles of existing road will be improved (i.e. improved beyond its original condition).

Decision Rationale

The Proposed Action Alternative meets the objectives for lands in the Matrix and Riparian Reserve Land Use Allocations and follows the management actions/directions set forth in the *Roseburg District Record of Decision and Resources Management Plan* (RMP) dated June 2, 1995. The following objectives will be met by this proposal:

1. Practice ecosystem management as outlined in the ROD/RMP (RMP, pg. 18-19; EA, pg. 2).
2. "Produce a sustainable supply of timber and other forest commodities" (RMP pg. 33) and meet District ASQ goals.

Section II of the EA describes two alternatives: a "No Action" alternative and a "Proposed Action" alternative. The No Action alternative was not selected because the EA did not identify any impacts of the Proposed Action that would be beyond those identified in the EIS. The No Action alternative would not meet the objective of producing a sustainable supply of timber and other forest commodities (RMP, pg. 60).

Cultural clearance with the State Historical Preservation Office was completed and resulted in a "No Effect" determination.

Consultation with U.S. Fish and Wildlife Service for this project has been completed on June 16, 1997. The Biological Opinion (pg. 42) concluded that the action is " . . . not likely to jeopardize the continued existence of the bald eagle, peregrine falcon, spotted owl or murrelet or adversely modify designated critical habitat for spotted owls and murrelets." *The Five-Year Status Review for the Northern Spotted Owl* (USFWS 2004) was released in November 2004. The final determination of the review was to keep the status of the northern spotted owl as 'threatened'. The following items effectively summarize the findings [Quotes from pages 55-56, in: USFWS. 2004. Northern Spotted Owl Five-Year Review: Summary and Evaluation. Portland, OR. pp. 73]:

- (1) "The rate of habitat loss on Federal lands has been substantially reduced, and projection models have been used to estimate a potential ingrowth of about 600,000 acres of late-successional habitat some of which will have the structural characteristics to support spotted owls."

(2) “Demographic data collected over 15 years document declining populations across the species range with the most pronounced declines in British Columbia, Washington, and northern Oregon. However, populations are still relatively numerous over most of the species historic range, suggesting the threat of extinction is not imminent, and the subspecies is not “endangered” even in the northern part of the range where the demographic results are least promising.”

(3) “The nature, magnitude, and extent of barred owl effects on northern spotted owls remain uncertain. Consequently, there was general agreement amongst managers that barred owl effects across the range must be weighted carefully, given uncertainty about how the species interact and potential time-lags in detecting effects. Likewise, the new threats of West Nile virus and Sudden Oak Death were perceived as both potentially severe and imminent, but substantial uncertainty about their effects mediated against placing too much weight on these factors.”

“In summary, for every risk factor that has declined since listing (e.g., the current rate of habitat loss due to timber harvest, the threat of predation), another factor was identified that counterbalanced risks (e.g., habitat removal due to uncharacteristic wildfires, West Nile virus, barred owls). The net change in loss of habitat is positive, and although spotted owl populations continue to decline, that response was expected.” Based upon the findings in the status review and in discussion with the U.S. Fish and Wildlife Service we do not believe that this constitutes significant new information in regards to reinitiating consultation.

The Record of Decision To Remove or Modify the Survey and Manage Mitigation Measures Standards and Guidelines in Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl, dated March 2004, has eliminated the Standards and Guidelines for Survey and Manage species or transferred them to a Special Status category. The sale area was resurveyed and no Special Status Plant species were observed.

A 1997 Biological Assessment (BA) for the Ward Creek Timber Sale made a determination of “may effect, likely to adversely affect” for Umpqua River cutthroat trout, Oregon Coast steelhead trout and Oregon Coast coho salmon. This determination was reflected in the NOAA Fisheries (formerly National Marine Fisheries Service) June 18, 1997 and July 22, 1997 Biological Opinions. As a result of the settlement of the Pacific Coast Federation of Fisherman’s Association vs. the National Marine Fisheries Service (NMFS) lawsuit, the Biological Opinion was withdrawn. In 2004, a new analytical process (AP) for Endangered Species Act consultation for listed fish species was developed by an interagency group including NOAA Fisheries, U.S. Fish and Wildlife Service, Bureau of Land Management and the U.S. Forest Service. A 2004 revised BA for the Ward Creek Timber Sale was submitted to NOAA Fisheries for conference on Oregon Coast coho salmon (proposed for listing) and Oregon Coast steelhead trout (candidate). This BA utilizes the new AP and serves to clearly document the logic tracking and links of the project with Watershed Analysis, Endangered Species Act Section 7 (c), 50 CFR Section 402.12, Consultation Handbook, Section 3.4, Streamlining Guidance, Essential Fish Habitat and associated NEPA documentation. At the time of the 2004 BA submittal, the three fish species consulted on in the original BA did not require ESA consultation. An October 28, 2004 conference report from NOAA Fisheries concurred with the project determination of “may effect, not likely to adversely affect” Oregon Coast coho salmon and Oregon Coast Steelhead trout.

This decision is based on the fact that the Proposed Action Alternative implements the Management Actions / Directions of the RMP. The project design criteria as stated in the EA would protect the Riparian Reserves, minimize soil compaction, limit erosion, protect slope stability, wildlife, air, water quality, and fish habitat, as well as protect other identified resource values. This decision recognizes that impacts could occur to some of these resources, however, the impacts to resource values would not exceed those identified in the *Final - Roseburg District Proposed Resource Management Plan / Environmental Impact Statement* (PRMP/EIS). The Decision provides timber commodities with impacts to the environment at a level within those anticipated in the RMP/EIS.

Comments were solicited from affected tribal governments, adjacent landowners and affected State and local government agencies. No comments were received. The thirty day public review period was completed on September 24th, 1998. One letter (Umpqua Watersheds, Inc.) with comments was received. These comments were reviewed to determine the adequacy of our analysis and whether new information had been provided that shows flawed analysis or assumptions on our part that would require new analysis or reconsideration of the proposed action. Several comments warrant clarification.

- “BLM is going to be logging to within only 20’ of streams . . . - dangerously close when unstable soils are not reserved out of the units” (UW, 9/14/98; pg. 9).

Response: The EA (pg. 6) prescribes a variable 20-180 ft. no-cut buffer to protect streambanks and provide stream shading. This buffer is adjusted based on site conditions. Unit 17A had an unstable area that was totally reserved from harvest (Appendix D, Concern #7) with the full width. Unit 5A had a potentially unstable area and a 100 ft. no-cut buffer was prescribed (Appendix D, Concern #5). Units 7C and 7E had slope concerns and lesser buffers (Appendix D, Concern #6) were prescribed. This sale was reviewed to determine if the original calls were proper. This resulted in the widening of the no-cut buffer on Unit 7E (Unit 7) to provide greater protection for the stream.

Compliance and Monitoring

Monitoring will be conducted as per the direction given in the RMP (Appendix I).

Protest Procedures

As outlined in 43 CFR § 5003 Administrative Remedies, protests may be filed with the authorized officer within 15 days of the first publication date of the Notice of Decision in the News Review. Protests shall be filed with the authorized officer (Marci L. Todd) and shall contain a written statement of reasons for protesting the decision and specifically state which portion or element of the decision is being protested and cite applicable Code of Federal Regulations (CFR) pertinent to the point(s) of protest. Protests received more than 15 days after the publication of the Notice of Decision are not timely filed and shall not be considered. The regulations do not authorize the acceptance of protests in any form other than a signed, written hard copy that is delivered to the physical address of the advertising BLM office. Upon timely filing of a protest, the authorized officer shall reconsider the decision to be implemented in light of the statement of reasons for the protest and other pertinent information available to her. The authorized officer shall, at the conclusion of her review, serve her decision in writing to the protesting party. Upon denial of a protest the authorized officer may proceed with the implementation of the decision.

Marci L. Todd, Field Manager
Swiftwater Field Office

Date